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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/015,768	12/17/2001	Kie Jin Park	P67414US0	4427
43569	7590	11/15/2005	EXAMINER	
MAYER, BROWN, ROWE & MAW LLP 1909 K STREET, N.W. WASHINGTON, DC 20006			DUNCAN, MARC M	
			ART UNIT	PAPER NUMBER
			2113	
DATE MAILED: 11/15/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

FINAL REJECTION

Status of the Claims

Claims 1, 4, 8, 9, 11 and 14 are rejected under 35 U.S.C. 102(e) as being anticipated by Harper et al. (2003/0036882).

Claims 2, 6, 7 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Harper et al. (2003/0036882 – hereinafter Harper (I)) in view of Harper et al. (6,629,266 – hereinafter Harper (II)).

Claims 3, 5, 12 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Harper et al. (2003/0036882) in view of Kumar et al. (6,789,213).

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 4, 8, 9, 11 and 14 are rejected under 35 U.S.C. 102(e) as being anticipated by Harper et al. (2003/0036882).

Regarding claim 1:

Harper teaches collecting system state information (paragraph 0011, lines 5-6) about the number of primary servers to monitor unstableness of the servers (paragraph 0013, lines 1-5).

Harper teaches if at least one of the servers is judged unstable as a result of monitoring (paragraph 0013, lines 1-5), judging existence of a spare server or other primary server having spare capacity (paragraph 0013, lines 5-8, paragraph 0038 and Fig. 5A and 5B – there is a spare server present in the system of Harper).

Harper teaches if at least one of the spare servers or the primary servers having spare capacity exists (Fig. 5A and 5B), duplexing all processes of the unstable primary server to the spare server or the other primary server having spare capacity according to a currently set operation mode (paragraphs 0011, 0038 and 0039 – the secondary server has the application for failover already running and the state of the primary is transferred to the secondary such that the secondary is ready when necessary. The operation mode of the Harper reference is active/standby).

Harper teaches upon completing duplexing, providing the unstable server with a system rejuvenation control signal for executing rejuvenation (paragraphs 0050 and 0064 – the system is provided with a rejuvenation signal as an alternative to waiting for system failure. It is clear that this signal is provided only when duplexing is completed, otherwise the invention would not operate as intended).

Regarding claim 4:

Harper teaches if the current mode is set as the active/standby mode, selecting any of the sparing servers (paragraphs 0011, 0038 and 0039 – the mode is active/standby. A server has clearly been selected to be the new primary server).

Harper teaches duplexing all the processes of the unstable primary server to the selected spare server (paragraphs 0011, 0038 and 0039 - the secondary server has the application for failover already running and the state of the primary is transferred to the secondary such that the secondary is ready when necessary).

Regarding claim 8:

Harper teaches system monitoring means for collecting system state information about the number of primary servers to grasp an unstable state of each of the servers (paragraphs 0011, lines 5-6, and 0013, lines 1-5).

Harper teaches cluster controlling means for providing a control signal for duplexing all processes of a primary server to a spare server or other primary server having spare capacity according to a currently set operation mode if the primary server is unstable as a result of system monitoring in said system monitoring means (paragraphs 0011, 0038 and 0039 – the secondary server has the application for failover already running and the state of the primary is transferred to the secondary such that the secondary is ready when necessary. The operation mode of the Harper reference is active/standby), and for providing the unstable primary server with a rejuvenation signal for system rejuvenation if the unstable primary server maintains an unstable system state for a certain time period (paragraphs 0050 and 0064 – the

system is provided with a rejuvenation signal as an alternative to waiting for system failure. It is clear that this signal is provided only when duplexing is completed, otherwise the invention would not operate as intended).

Harper teaches duplexing means for duplexing all processes of the unstable primary server to the spare server or the other server having spare capacity according to a duplexing control signal about the set mode provided from said cluster controlling means (paragraphs 0011, 0038 and 0039 – the secondary server has the application for failover already running and the state of the primary is transferred to the secondary such that the secondary is ready when necessary. The operation mode of the Harper reference is active/standby.).

Regarding claim 9:

Harper teaches a system state information collecting block for monitoring a system state of each of the primary servers to collect state information of the each server (paragraphs 0011, lines 5-6, and 0013, lines 1-5).

Harper teaches a rejuvenation command producing block for judging existence of an unstable primary server according to system state information collected in said system state information collecting block, and if any of the primary servers is unstable, producing a rejuvenation command signal for rejuvenation of unstable software of the unstable primary server and providing the same to said duplexing means (paragraphs 0050 and 0064 – the system is provided with a rejuvenation signal as an alternative to

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waiting for system failure. It is clear that this signal is provided only when duplexing is completed, otherwise the invention would not operate as intended).

Regarding claim 11:

Harper teaches wherein said cluster controlling means includes registering means for canceling the unstable primary server from an available server list when the unstable primary server is duplexed to the spare server or the other primary server having spare capacity in said duplexing means, and upon completing rejuvenation of the unstable primary server according to the rejuvenation signal, re-registering the rejuvenation-completed primary server in the available server list (paragraph 0064 – the primary server is replaced by the secondary server and when the primary server has been rebooted it is added back to the list as the secondary server).

Regarding claim 14:

The claim is rejected as a record medium readable by a digital processing apparatus that contains programs that cause the method of claim 1 to be performed.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 2, 6, 7 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Harper et al. (2003/0036882 – hereinafter Harper (I)) in view of Harper et al. (6,629,266 – hereinafter Harper (II)).

Regarding claims 2 and 10:

The teachings of Harper (I) are outlined above.

Harper (I) does not explicitly teach wherein said system state information contains at least one of group including operational load, continuous running time, memory usage, buffer usage of the primary server. Harper (I) does, however, teach predicting failure based on state information collected from the primary server.

Harper (II) wherein said system state information contains at least one of group including operational load, continuous running time, memory usage, buffer usage of the primary server in Fig. 1, 7, 9, 11, 12, col. 2 lines 31-34, col. 3 lines 47-52 and col. 4 lines 23-28.

It would have been obvious to one of ordinary skill in the art at the time of invention to combine the teachings of Harper (I) with those of Harper (II).

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One of ordinary skill in the art at the time of invention would have been motivated to make the combination because Harper (I) explicitly states a desire for the combination to be made in paragraphs 0001 and 0058.

Regarding claim 6:

The teachings of Harper (I) are outlined above.

Harper (I) does not explicitly teach judging if to execute a rejuvenation command according to operational load and continuous running time of the primary server subjected to rejuvenation. Harper (I) does, however, teach executing a rejuvenation command.

Harper (II) judging if to execute a rejuvenation command according to operational load and continuous running time of the primary server subjected to rejuvenation in Fig. 1, 7, 9, 11, 12, col. 2 lines 31-34, col. 3 lines 47-52 and col. 4 lines 23-28.

It would have been obvious to one of ordinary skill in the art at the time of invention to combine the teachings of Harper (I) with those of Harper (II).

One of ordinary skill in the art at the time of invention would have been motivated to make the combination because Harper (I) explicitly states a desire for the combination to be made in paragraphs 0001 and 0058.

Regarding claim 7:

Harper (I) teaches wherein said rejuvenation of the primary server subjected to rejuvenation includes file system clearing, buffer clearing, memory clearing and restart

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in paragraphs 0063 and 0064. Rejuvenation includes rebooting and starting from a clean state, and such rebooting necessarily includes file system clearing, buffer clearing and memory clearing.

Claims 3, 5, 12 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Harper et al. (2003/0036882) in view of Kumar et al. (6,789,213).

Regarding claims 3 and 12:

The teachings of Harper are outlined above.

Harper does not explicitly teach an active/active mode in which all of the servers constituting the cluster participate in service while mutually performing the role of the spare servers. Harper does, however, teach providing spare capacity in order to duplex processes in order to perform software rejuvenation.

Kumar teaches an active/active mode in which all of the servers constituting the cluster participate in service while mutually performing the role of the spare servers in col. 3 lines 1-12.

It would have been obvious to one of ordinary skill in the art at the time of invention to combine the teachings of Harper with those of Kumar.

One of ordinary skill in the art at the time of invention would have been motivated to make the combination because Kumar teaches that the use of an active/active mode allows for controlled takeover without human intervention. Kumar further teaches that the implementation is cost effective and simplified, which meets an explicitly stated desire of Harper (see Harper, paragraph 0071).

Regarding claim 5:

The combination of Harper and Kumar teaches duplexing the processes of the unstable primary server to the selected primary server having spare capacity. Harper teaches duplexing the processes to an area of spare capacity in paragraphs 0011, 0038 and 0039. The combination with Kumar teaches the spare capacity being that provided by another primary server.

Regarding claim 13:

The teachings of Harper regarding the active/standby mode are outlined above.

The combination of Harper and Kumar teaches duplexing the processes of the unstable primary server to the selected primary server having spare capacity. Harper teaches duplexing the processes to an area of spare capacity in paragraphs 0011, 0038 and 0039. The combination with Kumar teaches the spare capacity being that provided by another primary server.

Response to Arguments

Applicant's arguments filed 10/5/05 have been fully considered but they are not persuasive.

In response to applicant's argument that the Harper reference does not teach duplexing, the examiner disagrees. As was explicitly stated in the interview, the Harper reference clearly states that the application can already be running on the backup node

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(see paragraph 039). This is, therefore, a clear teaching of duplexing. The rejection is maintained.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marc Duncan whose telephone number is 571-272-3646. The examiner can normally be reached on M-F 9:00-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Beausoliel can be reached on 571-272-3645. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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ROBERT BEAUSOLIEL
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2100